

INTERNAL REVENUE SERVICE

Southwest Region

Date:

[REDACTED]

CERTIFIED MAIL

Department of the Treasury

Appeals Office

[REDACTED]

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Employer Identification Number:

[REDACTED]

Dear Sir or Madam:

This is a final adverse determination with respect to your exempt status under Section 501(c)(3) of the Internal Revenue Code.

You are not organized or operated as a charitable or educational day care center as required by section 501(c)(3) of the Internal Revenue Code.

Contributions made to your organization are not deductible under Section 170 of the Internal Revenue Code.

You are required to file Federal Income Tax returns with the Austin Service Center for taxable years for which the filing date of the appropriate return has passed. These returns should be filed within 90 days of the date of this letter, unless a request for extension of time is granted. Please send them to the attention of the EP/EO Division, attach a copy of this letter, and address any requests for time extensions to the EP/EO Division at the Service Center. Processing of an income tax return and assessing any taxes due will not be delayed because a petition for a declaratory judgment has been filed under Section 7428 of the Internal Revenue Code.

We will notify the appropriate State officials, as required by Section 6104(c) of the Code, that based on the information we have available, we are unable to recognize you as an organization described in Section 501(c)(3) of the Internal Revenue Code.

If you decide to contest this determination in court, a petition for a declaratory judgment proceeding in the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this determination was mailed to you.

The enclosed Publication 892 provides information about filing suit in these courts.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

[REDACTED]  
Associate Chief, Appeals

cc: [REDACTED]

Enclosure: As Stated

[REDACTED]

Dear Sir or Madam:

We have completed our consideration of your application for recognition of tax exempt status under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that your [REDACTED] were incorporated in the State of [REDACTED] on [REDACTED]. According to your Articles, your purpose is to conduct a day care center.

According to your application, you were formed to provide day care for children, and the organization was operating as a profit making business. The application goes on to state that your organization wishes to become nonprofit for certain advantages, namely the possibility of receiving contributions and grants. Your sources of support would be from nursery income and government payments.

The Schedule I -- Successors to "For Profit" Institutions, indicates that the name of the predecessor organization was [REDACTED]. However, the schedule also indicates that there was no sale of the predecessor organization to the applying organization.

In your correspondence dated [REDACTED], you have indicated that:

-By being a nonprofit organization, you would be eligible to participate in the Child/Adult Care Food Program.

-[REDACTED] is a separate entity from [REDACTED]

-[REDACTED] continues to exist.

-There was no transfer of assets from the for profit entity to the nonprofit entity.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname		[REDACTED]	[REDACTED]				
Date		4-5-91	[REDACTED]				

[REDACTED]

In your correspondence dated [REDACTED] you have indicated that:

- [REDACTED] is a for profit [REDACTED] corporation that has been in existence since [REDACTED].
- [REDACTED] owns the building, land and equipment which is used in its operations.
- [REDACTED] would be able to use the Nursery's kitchen facilities and equipment at no charge.
- Both [REDACTED] and [REDACTED] will be located at [REDACTED] in [REDACTED].
- Funds received by [REDACTED] from the Child/Adult Care Food Program and from federal grants would be disbursed for payroll of the cook and for food.
- [REDACTED] is different from a for profit organization in that it would be eligible to receive funds from the Child/Adult Care Food Program and federal grants.
- [REDACTED] has not, and will not in the future apply for exemption.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

[REDACTED] is an integral part of a for profit business, [REDACTED] It is performing a function of [REDACTED], that of feeding the children enrolled at this nursery. If exemption were granted to [REDACTED], [REDACTED] would be able to participate in the Child/Adult Care Food Program in a roundabout way, and benefit from [REDACTED]'s exemption.

Based on the information submitted by your organization, we have determined that you do not meet the requirements for exemption under section 501(c)(3) of the Internal Revenue Code.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]  
[REDACTED]  
District Director

Enclosure:  
Publication 392